

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 17, 2009

The Jefferson County Board of Zoning Appeals met on Thursday, September 17, 2009 at 3:00 p.m., in Meeting Room of the Jefferson County Court House. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle, Tiffany Hine and Ed Kelly. Staff members present were Acting Zoning Administrator, Jennifer Snyder; Assistant Prosecuting Attorney, Stephen Groh; and Zoning Secretary, Christine Chalmers. Director, Jennifer Brockman; and Alternate Member, Tyler Guynn, were absent with notification. Member, Jon Brusco, was also not in attendance. Attorney Groh advised that he would be unable to attend the October Meeting, due to training obligations.

Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

1. Approval of deferred Minutes from the June 18, 2009 Meeting.

Ed Kelly motioned to approve the Minutes from the June 18, 2009 meeting, without correction. Tiffany Hine seconded the motion, which carried with a unanimous vote.

2. Approval of Minutes from the August 20, 2009 Meeting.

Due to the lack of available Members who had attended the August 20th meeting (Tiffany Hine and Ed Kelly abstained from voting / Jon Brusco and Tyler Quynn were absent), Jeff Bresee motioned to defer consideration of said Minutes until the October 15th Meeting.

Ms. Chalmers swore in individuals who indicated they would be giving testimony.

3. Variance Request by property owners, John and Kimberly Mollahan, to reduce the side setback distance from 10' to 3' to allow for a portion of an existing fence that exceeds the 6' height restriction. Property description: 98 Basset Lane; Ranson, West Virginia. Article 9, Section 9.7
(Charles Town District / Map #2 / Parcel: #18.11/ 1.0002 acres) **(#ZV09-10)**

Owner, John Mollahan, stated that he was compelled to erect a fence for use as a noise barrier, to afford privacy and provide protection from his neighbors to the rear of his property, due to an ongoing harassment issue. As the fence row terrain is quite uneven, some portions of the structure exceeded the 6' height restriction, while other areas fell short of that allowance. To remedy the inconsistent measurement problem, Mr. Mollahan (a licensed contractor) hauled, spread and compacted soil at the base line of the fence. Ultimately, after natural settlement occurred, his intent was to provide a second application to also include grass seed. The resulting 6' fence height uniformity created by his efforts necessitated a building permit.

Constructed from pressure-treated plywood panels, though the fence is predominantly visible on the Owner's property it is camouflaged by foliage on the neighbor's side, which greatly diminishes their view of the structure. Mr. Mollahan presented Members with pictures of the property/structure, which afforded visual confirmation of his position. A letter of approval with signatures from his neighbors was also submitted.

Opposing comment was offered by Mr. Larry Titus, adjacent rear property owner, who expressed concern over the future aesthetic condition of the fence, since the panels are constructed of plywood. He also voiced his concern over not recognizing the actual ground-level height to determine the 6' measurement. Staff comment was presented by Jefferson County Compliance Officer, Mason Carter, who had initially advised Mr. Mollahan to apply for a Variance from setback distance requirements to allow for the additional fence height. Mr. Mollahan was also informed that he was expected to apply for a building permit, as the fence was built without benefit of having had one. Mr. Carter further addressed the fence condition concern presented by

JEFFERSON COUNTY BOARD OF ZONING APPEALS

SEPTEMBER 17, 2009

PAGE TWO

Mr. Titus, by stating that the use of pressure treated material is standard for the construction of exterior structures such as fencing and decks, and should not pose a problem for many years. In closing, Chairman Bresee instructed the applicants of the deliberation process, advising that the final determination did not take into account personal issues, but is based solely on factual consideration.

4. Variance Request by property owners, David and Kate Didden, to reduce the access easement front setback distance from 40' to 21.97' to allow for the construction of a passive solar home and shared garage. Property description: 6279 Scrabble Road; Shepherdstown, West Virginia. Article 9, Section 9.7 (Shepherdstown District / Map #3 / Parcel #11.4 / 1.239 acres) (#ZV09-11)

5. Variance Request by property owners, David and Kate Didden, to reduce the rear setback distance from 50' to 12' to allow for the construction of a passive solar home and shared garage. Property description: 6279 Scrabble Road; Shepherdstown, West Virginia. Article 9, Section 9.7 (Shepherdstown District / Map #3 / Parcel #11.4 / 1.239 acres) (#ZV09-12)

Ms. Huddle recommended that items #4 and #5 be addressed in conjunction, as both Requests related to the same subject matter. She also noted that the referenced Section of the Zoning Ordinance was incorrectly stated on the Variance Request Application as Section 9.4, but was advised by Ms. Chalmers that it was accurately advertised in the Spirit of Jefferson Newspaper and on the Agenda.

In an effort to enhance the quality of her elderly mother's (Noreen Albright) remaining years of independent living, applicant Kate Didden advised that the Variance is being sought to facilitate prompt care-giving, reduce social isolation and assist Ms. Albright as she ages. The project, which is designed for joint residential use by Ms. Albright and the applicant's family who currently reside on adjacent Lot #5, will include a shared garage. As the intent of the proposed project is to construct a passive solar cottage for Ms. Albright, the entire southern front of the structure is comprised of large windows that are purposed to capture solar gain. These requirements necessitate an angled orientation to maximize energy efficiency, which replicates the positioning of the applicant's solar efficient residence. The planned construction will not impact existing septic reserves and/or wells on any of the neighboring properties.

Supporting comment was voiced by the applicant's brother, Gregory J. Didden, who advised that the five (5) lot "complex" previously created by parent-to-child subdivision, is owned/used by family members who are all agreeable to granting the request. He further stated that the referenced property has a large outcropping of rock, situated centrally on the site, which impedes usual structure placement. Additional approval was expressed through written consent from the applicant's brother, Michael Didden, who is the owner of adjacent Lot #3.

The following Agenda Items will be addressed upon return from Deliberations:

- 6. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Acting Zoning Administrator, Jennifer Snyder.**
- 7. Legal Update.**
- 8. Vote on written decisions from prior Board of Zoning Appeal Meetings.**
- 9. Correspondence.**

Christy Huddle motioned to go into Deliberative Session at 3:30 p.m. Tiffany Hine seconded the motion, which carried with a unanimous vote. Tiffany Hine motioned to return from Deliberative Session; Christy Huddle seconded the motion. The meeting commenced again at 3:40 p.m.

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 17, 2009
PAGE THREE**

- 3. Variance Request by property owners, John and Kimberly Mollahan, to reduce the side setback distance from 10' to 3' to allow for a portion of an existing fence that exceeds the 6' height restriction. (#ZV09-10)**

Christy Huddle motioned to approve the Request, which was amended to reference Section 9.5(b) of the Zoning Ordinance, to allow for a height increase to the existing fence from 6' to 6'8", as constructed. Tiffany Hine seconded the motion, which carried with a unanimous vote.

In an expression of appreciation, Chairman Bresee complimented both Compliance Officer, Mason Carter, and Acting Zoning Administrator, Jennifer Snyder, for the information provided and also the professionalism demonstrated while assisting the Board with this matter.

- 4. Variance Request by property owners, David and Kate Didden, to reduce the access easement front setback distance from 40' to 21.97' to allow for the construction of a passive solar home and shared garage. (#ZV09-11)**

Christy Huddle motioned to approve the Request as referenced; Tiffany Hine seconded the motion, which carried with a unanimous vote.

- 5. Variance Request by property owners, David and Kate Didden, to reduce the rear setback distance from 50' to 12' to allow for the construction of a passive solar home and shared garage. (#ZV09-12)**

Christy Huddle motioned to approve the Request as referenced; Tiffany Hine seconded the motion, which carried with a unanimous vote.

- 6. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Acting Zoning Administrator, Jennifer Snyder.**

Acting Zoning Administrator, Jennifer Snyder, advised that Jennifer Brockman was (regrettably) unable to attend the meeting due to her presence at a two-day Leadership Jefferson Retreat. The Director Brockman would be available at next month's Board of Zoning Appeals Meeting. Ms. Snyder also informed the Board that the Departments of Planning and Zoning were pleased to announce the addition of the new Office Assistant, Amy Puertz, who began with the Department on Monday, September 14th. She further stated that the projected start date for the new Planner, Seth Rivard, was Tuesday, September 29th.

In response to inquiries regarding the upcoming Zoning Ordinance Referendum Vote which is scheduled to take place on Saturday, November 7th, Ms. Snyder indicated that, for the purpose of clarification, Director Brockman was in the process of preparing a comparison analysis to assist with public understanding of both a traditional and non-traditional ordinance.

7. Legal Update

In response to questions regarding a determination on the subject of "Gaming" in Jefferson County, it was advised that the County Commission had expressed their own individual opinions to concerning this matter.

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 17, 2009
PAGE FOUR**

8. Vote on written decisions from prior Board of Zoning Appeal Meetings.

Assistant Prosecuting Attorney Stephen Groh provided Chairman Jeff Bresee with the Finding of Facts and Conclusions of Law from the August 20, 2009 Variance Request Ruling for approval by signature, as follows:

Variance Request by Mike Lowrey, Pastor of Rock Spring Church, to substitute the required 10' screened side buffer (adjacent to a commercial property) with an existing 25' natural buffer. Property description: 114 Poor Farm Road; Kearneysville, West Virginia. Article 4, Section 4.16 (Middleway District / Map #15 / Parcel: #1.5 / 14.5 acres)

(#ZV09-09)

It was noted that Pastor Lowrey expressed his gratitude to both Staff and Members of the Board of Zoning Appeals for the ease of processing the above referenced Variance.

Due to the fact that available Members in attendance at the Board of Zoning Appeals Meetings may not always represent a quorum vote, in an effort to insure approval of the Findings of Fact and Conclusions of Law within the required time-frame of thirty days from the initial Ruling, Chairman Jeff Bresee motioned that, going forth from the September Meeting, all Findings of Fact and Conclusions of Law may be approved by signature of the Board Chairman exclusively. Christy Huddle seconded the motion which carried unanimously. Accordingly, approval of same, for the above referenced Variance Request (Item #8) was accomplished by signature of Chairman Bresee.

Mr. Bresee further requested that a copy of the Findings of Fact and Conclusions of Law be forwarded (preferably by email) to Board Members by Assistant Prosecuting Attorney, Stephen Groh, for the expressed purpose of review and/or revision, prior to the monthly meeting.

9. Correspondence. None.

Christy Huddle motioned to adjourn the meeting at 4:00 p.m. Tiffany Hine seconded the motion, which carried with a unanimous vote.

An Audio Transcript of this meeting can be found on CD # _____.
Zoning Secretary, Christine Chalmers, prepared these Minutes.